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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

S1 17 Cr. 0308 (DLC)

5 DAVID BLASZCZAK, THEODORE
6 HUBER, ROBERT OLAN and
CHRISTOPHER WORRALL,

7 Defendants.

8 -----x

9 May 31, 2017

10 11:05 a.m.

11 Before:

12 HON. DENISE COTE,

13 District Judge

14 APPEARANCES

15 JOON H. KIM
16 Acting United States Attorney for the
17 Southern District of New York

18 BY: A. DAMIAN WILLIAMS
19 IAN PATRICK MCGINLEY
JOSHUA ARDITI NAFTALIS
Assistant United States Attorneys

20 FEDERAL DEFENDERS OF NEW YORK INC.
21 Attorneys for Defendant David Blaszcak
BY: SABRINA SHROFF

22 KRAMER LEVIN NAFTALIS & FRANKEL, LLP
23 Attorneys for Defendant Theodore Huber
BY: BARRY H. BERKE
24 DANI R. JAMES

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APPEARANCES CONTINUED

ALLEN & OVERY, LLP

Attorneys for Defendant Robert Olan

BY: DAVID C. ESSEKS

EUGENE EDWARD INGOGLIA

DONALDSON & CHILLIEST, LLP

Attorneys for Defendant Christopher Worrall

BY: XAVIER R. DONALDSON

- also present -

Lisa Chan, U.S. Pretrial Services Officer

oOo

(Case called)

MR. WILLIAMS: Damian Williams, Ian McGinley and Joshua Naftalis for the government, and with us at counsel table is an officer from Pretrial Services.

Good morning, your Honor.

THE COURT: Good morning.

MR. BERKE: Good morning, your Honor. Barry Berke and Dani James for Mr. Theodore Huber.

THE COURT: Thank you, Mr. Berke. Nice to see.

Let me just begin by taking appearances in the order of the defendants as they are listed in the Indictment

MR. BERKE: Of course, your Honor.

THE COURT: I think it is Mr. Blaszcak. Is Mr. Blaszcak's counsel here?

MS. SCHROFF: I am here. Good morning, your Honor.

Federal Defenders of New York by Sabrina Shroff. I am standing

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1 up for Mr. Patton, who will be counsel to Mr. Blaszcak,
2 assuming that the Court so appoints us.

3 Mr. Blaszcak is in court today. He is standing
4 behind me.

5 I do apologize, your Honor. I would ask the Court to
6 give me some time for the financial affidavit. Mr. Blaszcak
7 had a very tortuous flight here. His flight on JetBlue was
8 delayed several times last night. I have all of the itinerary,
9 if the Court would so want it. But I would just ask the Court
10 to give us about seven days to get ahold of his financial
11 situation so as to provide an affidavit to the Court.

12 THE COURT: OK. I'll come back to this issue in one
13 second, Ms. Shroff. Thank you for that information.

14 Mr. Huber.

15 DEFENDANT HUBER: Yes, your Honor.

16 THE COURT: And, counsel, will you place your
17 appearances on the record, please.

18 MR. BERKE: Thank you, your Honor.

19 It is Barry Berke and Dani James, of Kramer Levin, for
20 Mr. Huber.

21 THE COURT: Thank you very much.

22 And for Mr. Olan.

23 MR. ESSEKS: David Esseks and Eugene Ingoglia from
24 Allen & Overy. Good morning, your Honor.

25 THE COURT: Good morning, Mr. Esseks.

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1 And for Mr. Worrall.

2 MR. DONALDSON: For Mr. Worrall, Xavier R. Donaldson.

3 Good morning your Honor.

4 THE COURT: Good morning.

5 Welcome, everyone. You may be seated.

6 So let me just address the issue you raised,
7 Ms. Shroff. You're here because you understand, if the
8 defendant qualifies for appointment of counsel, that the
9 Federal Defenders, Mr. Patton, will be appointed by the
10 magistrate judge?

11 MS. SHROFF: Yes, your Honor. Mr. Patton and I would,
12 of course if the magistrate judge approves, we would seek
13 appointment.

14 THE COURT: OK. But just so I understand, why are you
15 here without that, going to the magistrate judge first, so I
16 understand the procedure?

17 MS. SHROFF: Yes, your Honor. It is simply because
18 there was a delay in our meeting with the client. Mr. Patton
19 is stuck at the Federal Defenders conference. He is not here
20 this morning. I was trying to make sure I had a complete sense
21 of his finances before I had him fill out a financial
22 affidavit, which is the only prudent thing for me to do by the
23 Federal Defenders.

24 THE COURT: Just to return to my question. The
25 magistrate judge had identified the Federal Defenders as the

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1 attorney for the defendant if he qualifies?

2 MS. SHROFF: Yes, your Honor.

3 THE COURT: Good.

4 MS. SHROFF: I think --

5 THE COURT: That's all I wanted to know.

6 MS. SHROFF: Yes.

7 THE COURT: OK. That's great, and we'll talk about a
8 schedule in a moment for completion of the process.

9 MS. SHROFF: Your Honor, I just want to be precise.
10 The magistrate clerk's office, not the actual sitting judge,
11 the clerk's office.

12 THE COURT: That's fine.

13 MS. SHROFF: Thank you, your Honor.

14 THE COURT: Thank you.

15 I have a letter of May 30th from counsel for
16 defendants Huber and Olan asking that the court's committee on
17 assignments address whether or not this case was properly
18 assigned to this Court. And I reached out to the Assignment
19 Committee this morning the first thing when I became aware of
20 this letter. It's addressed jointly to me and Judge McMahon.
21 And as a result all I'm going to do today is arraign the
22 defendants and deal with speedy trial issues. I won't conduct
23 the initial conference that I would normally conduct in a
24 criminal case. So we'll just deal with these procedural issues
25 and then adjourn the conference until there is a decision from

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1 the Assignment Committee.

2 So let me temporarily appointment the Federal
3 Defenders, by Mr. Patton and Ms. Shroff, for the defendant
4 Blaszczyk for purposes of the arraignment today and the
5 proceedings that we'll have here in court. And we'll set a
6 schedule for Ms. Shroff and/or Mr. Patton to present a CJA
7 affidavit, if that's appropriate, to the magistrate judge.

8 And you asked for one week, Ms. Shroff, is that right?

9 MS. SHROFF: If I could have that time, I would
10 appreciate it, your Honor. Thank you.

11 THE COURT: Any objection by the government?

12 MR. WILLIAMS: That is fine, your Honor.

13 THE COURT: That's June 7th. Great.

14 And Mr. Donaldson, you have risen.

15 MR. DONALDSON: Yes, your Honor. We are in the same
16 position as Mr. Worrall. We received a notification for
17 representation this morning about 10:35/10:40, so we haven't
18 been able to ascertain his specifics regarding the financial
19 information as well. We request that same one-week time
20 period.

21 THE COURT: Your application is granted.

22 And I would like a letter from you, Ms. Shroff, and
23 you, Mr. Donaldson, within one week just advising the Court, or
24 the judge to whom this case will then be assigned, whether or
25 not that process has been completed or not so that we don't

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lose track of the proper appointment of counsel for these two defendants.

Agreeable, Ms. Shroff?

MS. SHROFF: Certainly, your Honor.

THE COURT: Mr. Donaldson.

MR. DONALDSON: Absolutely.

THE COURT: Good. So let's take the arraignment of the four defendants. I would ask each of them to stand, please, and I'm going to ask each of you a series of three questions: Have you received a copy of the Superseding Indictment marked S1 17 Cr. 308? Do you wish me to read it to you. And how do you plead, guilty or not guilty?

We'll start with you, Mr. Blaszcak, have you received a copy of the Superseding Indictment, S1 17 Cr. 308?

DEFENDANT BLASZCZAK: Yes, your Honor.

THE COURT: Do you wish me to read it to you?

DEFENDANT BLASZCZAK: No, your Honor.

THE COURT: How do you plead, guilty or not guilty?

DEFENDANT BLASZCZAK: Not guilty, your Honor?

THE COURT: You may be seated.

Mr. Huber, have you received a copy of that Indictment?

DEFENDANT HUBER: Yes, your Honor.

THE COURT: Do you wish me to read it to you?

DEFENDANT HUBER: No, your Honor.

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1 THE COURT: How do you plead, guilty or not guilty?

2 DEFENDANT HUBER: Not guilty, your Honor.

3 THE COURT: Thank you.

4 Mr. Olan, have you received a copy of that Indictment?

5 DEFENDANT OLAN: Yes, your Honor.

6 THE COURT: Do you wish me to read it to you?

7 DEFENDANT OLAN: No, your Honor.

8 THE COURT: How do you plead, guilty or not guilty.

9 DEFENDANT OLAN: Not guilty, your Honor.

10 THE COURT: Thank you.

11 Mr. Worrall, have you received a copy of that

12 Indictment?

13 DEFENDANT WORRALL: Yes, your Honor.

14 THE COURT: Do you wish me to read it to you?

15 DEFENDANT WORRALL: No, your Honor.

16 THE COURT: How do you plead, guilty or not guilty?

17 DEFENDANT WORRALL: Not guilty, your Honor.

18 THE COURT: Thank you. You may be seated.

19 So I will take a report from the government on the
20 status of the speedy trial clock.

21 MR. WILLIAMS: Your Honor, the defendants were present
22 last week -- or Mr. Olan and Mr. Huber were presented last
23 week, and time was excluded as to those two. We submitted a
24 letter to Judge Forrest moving to exclude time as to the other
25 two and that was granted, your Honor, so no time has expired

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1 off of the clock. Sorry. One day has been off of the clock,
2 your Honor, but for the two defendants who were not present in
3 district last week, so Mr. Blaszcak and Mr. Worrall.

4 THE COURT: OK. So, actually, let's just deal with
5 the two defendants who were due in court last week.

6 Has any time expired with respect to those two
7 defendants?

8 MR. WILLIAMS: Yes, your Honor. One day.

9 THE COURT: And how do you calculate that?

10 MR. WILLIAMS: We submitted a letter the day -- on May
11 24th, your Honor.

12 THE COURT: Is this their first appearance in court?

13 MR. WILLIAMS: In this district, your Honor.

14 THE COURT: OK. Isn't time excluded then until today
15 for those two defendants and as a result time is excluded 'til
16 today for their codefendants?

17 MR. WILLIAMS: Yes, your Honor. That is correct.

18 THE COURT: OK. So we have a record of what I think
19 the calculation is, which is no time has elapsed on the speedy
20 trial clock. At most, it appears one day has elapsed. So I
21 think we're in the same rough ballpark with respect to the
22 Speedy Trial Act calculation.

23 Will the government submit a letter shall we say by
24 Friday with the Speedy Trial Act calculation that it believes
25 applies to this case.

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1 MR. WILLIAMS: Certainly, your Honor.

2 THE COURT: Thank you.

3 So, counsel, I'm going to suggest that we exclude time
4 for two weeks and with the understanding that that time may be
5 lengthened or shortened, but at least presumptively for two
6 weeks in order to give the Assignment Committee an opportunity
7 to review and consider the May 30th letter. Is there -- let me
8 make sure that that's agreeable to everyone.

9 Does the government have any objection?

10 MR. WILLIAMS: No, your Honor, not to the exclusion of
11 time.

12 THE COURT: Thank you.

13 And Ms. Shroff, do you have any objection?

14 MS. SHROFF: On behalf of Mr. Blaszcak, I do not,
15 your Honor. Thank you.

16 THE COURT: Mr. Berke, do you have any objection?

17 MR. BERKE: We do not. Thank you, your Honor.

18 THE COURT: Mr. Esseks, do you have any objection?

19 MR. ESSEKS: No, your Honor.

20 THE COURT: And Mr. Donaldson, do you have any
21 objection?

22 MR. DONALDSON: No, your Honor.

23 THE COURT: Thank you.

24 So two weeks from today is June 14th. I'm going to
25 exclude time from today until June 14th, finding the exclusion

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1 to be in the interest of the justice and to outweigh the best
2 interests of the defendants and the public in a speedy trial.
3 It will permit the Assignment Committee of this court to
4 consider the application that was made late yesterday, and if
5 we need to extend time further, we'll be in touch with counsel
6 and you will all have an opportunity to be heard with respect
7 to that.

8 I make this exclusion pursuant to Title 18, United
9 States Code, Section 3161(h)(7)(A), And that goes to June 14th.

10 Mr. Williams, is there anything else we need to do
11 right now?

12 MR. WILLIAMS: Yes, your Honor. So bail has not been
13 set for defendants Blaszczyk and Worrall, and we have the
14 Pretrial Services officer here. The parties have not had a
15 chance to confer about a potential proposed bail package for
16 the Court's consideration. However, in just looking at the
17 report that's been provided by Pretrial, the recommendation
18 that Pretrial has set forth seems agreeable to the government.

19 If the Court wants to hear from defense counsel as to
20 the potential bail package, we are certainly happy to speak
21 with them first and then confer, present a package to your
22 Honor for your Honor's consideration, or follow whatever
23 procedure the Court seems to prefer.

24 THE COURT: OK. Why don't you just take a moment here
25 and consult with Ms. Shroff and Mr. Donaldson and see if there

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1 is any objection to what you proposed.

2 (Pause)

3 MR. WILLIAMS: Thank you, your Honor.

4 The parties have conferred, and we would suggest a
5 bail package for each defendant that follows what's set forth
6 in the Pretrial Services report, with one exception, that being
7 as opposed to securing the \$500,000 bond with \$50,000 of cash,
8 that instead we remove the cash security and that the bond be
9 cosigned by three financially responsible people.

10 With regard to Mr. Blaszcak, Pretrial recommends that
11 travel be restricted to South Carolina and New York, which is
12 fine with the government.

13 For Mr. Worrall, travel should be restricted to
14 Maryland and New York, your Honor.

15 MR. DONALDSON: Could we have a second, your Honor?

16 (Pause)

17 THE COURT: So, Mr. Donaldson, do you have a copy of
18 the Pretrial Services' May 31st report?

19 MR. DONALDSON: I do, your Honor.

20 THE COURT: And, Ms. Shroff, do you have a copy of the
21 Pretrial Services' May 31st report?

22 MS. SHROFF: I do, your Honor. And just if I may
23 update the Court slightly?

24 THE COURT: Yes.

25 MS. SHROFF: The Southern District Pretrial Services'

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1 office was kind enough to accommodate us this morning, and we
2 had an interview with Ms. Santana, who is the Pretrial Services
3 officer, so she also apprised me of the bail package.

4 THE COURT: OK. So let me deal with Mr. Blaszcak's
5 terms of release first.

6 As I understand it, he will be executing a personal
7 recognizance bond of \$500,000, to be cosigned by three
8 financially responsible persons. He will be supervised by the
9 Pretrial Services office. His travel will be restricted to the
10 Southern and Eastern Districts of New York and the District of
11 South Carolina. He shall surrender his travel documents and
12 not apply for any replacement documents. He shall participate
13 in mental health treatment and evaluation, as ordered by the
14 Pretrial Services office. And he shall not have any contact
15 with his codefendants, victims of the alleged -- of the charged
16 crimes, or potential witnesses outside the presence of counsel.

17 In addition, there are other standard conditions that
18 apply, which include no possession of a firearm, destructive
19 device or other weapon; no abuse of alcohol; no unlawful
20 possession of a drug or controlled substance unless prescribed
21 by a medical practitioner, and a requirement that he submit to
22 drug testing or treatment at the discretion of the Pretrial
23 Services office.

24 Do I understand that there is consent to that,
25 Ms. Shroff?

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1 MS. SHROFF: Yes, your Honor. There is consent from
2 us.

3 THE COURT: Thank you.

4 Let's turn, then, to Mr. Worrall.

5 MR. DONALDSON: Your Honor, before we do that, could I
6 have one more second with the government?

7 THE COURT: Sure.

8 MR. DONALDSON: Thank you.

9 (Pause)

10 MR. DONALDSON: Your Honor, I am ready.

11 THE COURT: Thank you.

12 So, as I understand it, based on the report that's
13 been submitted to me and counsel's representations, the bail
14 package that has been consented to has the following terms:
15 That the defendant will be subject to Pretrial Services'
16 supervision, that his travel is restricted to the District of
17 Maryland and the Southern and Eastern Districts of New York.
18 He must surrender his travel documents, which he has already
19 done, and will not apply for replacement documents.

20 He must submit to drug testing and treatment as
21 directed by the Pretrial Services' officer, and the same
22 applies to mental health treatment and evaluation, that is, as
23 directed by the Pretrial Services officer.

24 He must refrain from contact with codefendants,
25 witnesses or victims unless those communications happen in the

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1 presence of counsel.

2 There is a requirement that he maintain employment as
3 directed by the Pretrial Services officer. And the same
4 standard conditions with respect to refraining from use of
5 drugs or controlled substances other than as prescribed by a
6 doctor, and a requirement that he notify his current employer
7 of the charges contained in the Indictment.

8 Have I correctly stated the terms on which the parties
9 have agreed, Mr. Williams?

10 MR. WILLIAMS: Your Honor, just the dollar amount of
11 the bond being \$500,000.

12 THE COURT: Thank you.

13 MR. WILLIAMS: With three cosigners, your Honor.

14 THE COURT: Yes. Thank you.

15 That the defendant execute a \$500,000 personal
16 recognizance bond cosigned by three financially responsible
17 people.

18 And, Mr. Donaldson, have I correctly stated the
19 conditions as you understand them?

20 MR. DONALDSON: Yes, you have, your Honor.

21 MR. WILLIAMS: Your Honor, I'm sorry. I don't know if
22 we misheard you, but did you mention the travel restriction to
23 the District of Maryland, the Southern and Eastern Districts of
24 New York?

25 THE COURT: I believe I did.

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1 MR. WILLIAMS: OK.

2 THE COURT: Let's talk about a schedule for the
3 cosigning, and shall we say that should happen within one week
4 as well? Is there any objection to that, Ms. Shroff?

5 MS. SHROFF: No, there is not, your Honor.

6 THE COURT: Mr. Donaldson?

7 MR. DONALDSON: No, your Honor.

8 THE COURT: OK. Good.

9 So, Mr. Williams, anything else we need to do?

10 MR. WILLIAMS: Your Honor, just as a matter of
11 logistics, we would like the opportunity to submit a response
12 to the letter that was filed last night by Mr. Berke to the
13 Assignment Committee. Should we submit it to the Court or
14 should we submit it directly to the Assignment Committee via
15 Chief Judge McMahon?

16 THE COURT: When did you want to submit that?

17 MR. WILLIAMS: We would like two weeks to submit a
18 letter.

19 THE COURT: No.

20 MR. WILLIAMS: OK. Any schedule that the Court sets
21 would be fine with the government.

22 THE COURT: Friday at noon.

23 MR. WILLIAMS: OK. And, so, should we --

24 THE COURT: It should be sent -- why don't we follow
25 the same procedure that defense counsel used, send it directly

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1 to Chief Judge McMahon, who is Chair of the Assignment
2 Committee, and with a copy to me is fine.

3 MR. WILLIAMS: Thank you, your Honor.

4 THE COURT: Good. Good.

5 So, Ms. Shroff, anything else we need to do today?

6 MS. SHROFF: We do not, your Honor. Thank you.

7 THE COURT: And Mr. Berke, anything else we need to do
8 today?

9 MR. BERKE: No, your Honor. Thank you.

10 THE COURT: Mr. Esseks, anything else we need to do
11 today?

12 MR. ESSEKS: No. Thank you, your Honor.

13 THE COURT: And, finally, Mr. Donaldson, anything else
14 we need to do today?

15 MR. DONALDSON: No, your Honor. Thank you.

16 THE COURT: Good. Thank you all.

17 ALL COUNSEL: Thank you, Judge.

18 THE CLERK: All rise.

19 - - -